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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-418

NEWELL HAMMOND,

Petitioner,

v.

UNITED PAPERMAKERS AND PAPERWORKERS UNION, A.F.L.-C.I.O., UNITED PAPERMAKERS AND PAPERWORKERS, LOCAL No. 985, and WATERVLIET PAPER COMPANY, DIVISION OF HAMMERMILL PAPER COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT WATERVLIET PAPER COMPANY IN OPPOSITION

The Respondent WATERVLIET PAPER COMPANY respectfully prays that the Petition for a Writ of Certiorari to review the Judgment and Opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on June 14, 1972 be denied.

OPINIONS BELOW

The Bench Opinion of the District Court granting Respondents' Motions to Dismiss is reproduced in Appendix C, p. 24, of the Petition for a Writ of Certiorari. The Opinion of the Court of Appeals affirming the Judgment of the District Court is reproduced in Appendix A, p. 20, of the Petition for a Writ of Certiorari.

JURISDICTION

Respondent does not question the jurisdiction of this Court as set forth in the Petition.

QUESTION PRESENTED

Petitioner's argument in the Reasons for Granting the Writ, pp. 7-18, asserts no rights involved other than the free exercise of religion. Petitioner's Complaint reproduced in Appendix E, pp. 28-32, of the Petition contains no allegation that the tenets of his church, rather than his personal convictions, forbid Petitioner from paying dues and fees to the Union. Therefore, the question presented is whether the Respondents violated the Petitioner's right to the free exercise of religion as provided under the First Amendment to the Constitution by discharging him pursuant to the union shop clause contained in the Collective Bargaining Agreement when the Petitioner's personal religious convictions precluded him from paying dues and fees to the Union.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondent has no objection to the constitutional provisions and statutes involved as set forth by the Petitioner.

STATEMENT OF THE CASE

Petitioner's Statement of the Case is a summary of the Petitioner's Complaint, Appendix E, pp. 28-32, which for purposes of this Petition must be taken as true. Petitioner's Statement of the Case is substantially correct in summarizing the allegations contained in the Complaint.

Petitioner asserts that he has a right to cause the Respondent Union, the Respondent Company and the United States to change the arrangements they have made to foster cooperation and efficiency in the national economy through use of the union shop. Petitioner claims it is against his religious convictions to pay union dues. These dues are his share of the cost the union incurs in representing him in collective bargaining. Petitioner does not claim his union dues are being used for any illegitimate purpose. He does not claim that he has been singled out from other workers and treated differently. But he does charge that the Respondent has a duty to treat him differently than all the other people it employs. Petitioner claims he should be allowed to work for the Company even though he ignores the Union Shop Agreement the Company has accepted.

REASONS FOR DENYING THE WRIT

I. This Case Raises No Important Question Of Constitutional Law Which Has Not Been Previously Decided By This Court.

There can be no doubt that freedom to hold religious beliefs and opinions under the First Amendment is absolute, *Torcaso v. Watkins,* 367 U.S. 488; *Fowler v. Rhode Island,* 345 U.S. 67; *West Virginia State Board of Education v. Barnette,* 319 U.S. 624; *Cantwell v. Connecticut,* 310 U.S. 296; *Reynolds v. United States,* 98 U.S. 145.

Nor can there be any doubt, except in Petitioner's mind, that freedom to act or not to act, even when such act or

omission is in accord with one's religious convictions, is not totally free from governmental restrictions, *Braunfeld v. Brown*, 366 U.S. 599; *Cleveland v. United States*, 329 U.S. 14; *Prince v. Massachusetts*, 321 U.S. 158; *Cantwell v. Connecticut*, 310 U.S. 296; *Jacobson v. Massachusetts*, 197 U.S. 11; and *Reynolds v. United States*, 98 U.S. 145.

These principles have also been expressed by the proposition that religious discrimination should not be equated with failure to accommodate, *Dewey v. Reynolds Metals Co.*, 429 F.2d 324, 335 (CA6 as affirmed without opinion by the United States Supreme Court, 402 U.S. 689); *Dawson v. Mizell*, 325 F. Supp. 511 (D.C., E.D. Va., 1971).

Petitioner's argument in the present case was anticipated and rejected nearly two centuries ago by the *First Constitutionalist*, Thomas Jefferson, when he wrote:

> "Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that *the legislative powers of government reach actions only, and not opinions*, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced *he has no natural right in opposition to his social duties.*" 8 *Works of Thomas Jefferson* at 113. (Emphasis added).

When the Congress, in the Railway Labor Act, Section 2, Eleventh, and in the National Labor Relations Act, Section 8(a)(3), authorized an employer and a union to agree, under certain conditions, to require union membership as a condition of employment, the payment of union

dues and initiation fees by an employee under such circumstances became a *social duty*.

This Court and other courts of the United States have, without exception, always treated the payment of such dues and initiation fees as a *social duty* which is not an unconstitutional infringement upon an employee's First Amendment rights.

The issue Petitioner presents was firmly decided by this Court in *Railway Employees' Dept. v. Hanson*, 351 U.S. 225. The *Hanson* case involved a suit by certain nonunion employees of a railroad to enjoin enforcement of a union shop agreement entered into between the railroad and labor organizations pursuant to the union shop provisions of the Railway Labor Act, the analogous provisions of Section 8(a)(3) of the National Labor Relations Act. The employees claimed that the agreement violated their First Amendment rights of freedom of association and their Fifth Amendment rights of due process. This Court unanimously held that:

> "... the requirement for financial support of the collective bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments.", 351 U.S. at 238.

In the case *sub judice* there is no allegation that more was required of Petitioner than payment of periodic dues, initiation fees and assessments or that the exaction of such payments was a cover for forcing ideological conformity. Petitioner acknowledges that he was discharged solely for failure to give financial support to the legitimate collective bargaining agency. *Hanson* should, therefore, be dispositive, but the Petitioner argues that this Court's holding does not embrace the case at bar.

This Court's admittedly limited holding in *Hanson* proved appropriate. Six years later in *International Ass'n of Machinists v. Street*, 367 U.S. 740, this Court confronted a situation where certain union employees, in a union shop au-

thorized by Section 2, Eleventh of the Railway Labor Act, sought to enjoin the enforcement of that union shop agreement on the grounds that it violated their First Amendment rights to the extent that the union used dues, initiation fees and assessments for purposes other than collective bargaining, more specifically, to finance the campaigns of candidates for Federal and State offices whom the employees opposed. This Court did not reach the constitutional issue, but held the Railway Labor Act by its terms denied the union such authority. However, this Court specifically reaffirmed its fundamental holding in *Hanson*.

When closely examined, *Hanson* and *Street* indicate that if only the statutory duties are required of an employee, such duties are not an unconstitutional infringement on First Amendment rights. Only the statutory duties have been required in the case at bar.

Other courts have heard Petitioner's arguments and then interpreted *Hanson* as holding what this Court explicity said it held. Thus, in *Linscott v. Miller Falls Co.*, 440 F.2d 14 (CA1) cert. den. 404 U.S. 872, a case identical to the one *sub judice* the United States Court of Appeals, First Circuit, per Chief Judge Aldrich stated there was *insufficient basis for distinguishing Railway Employees' Dep't v. Hanson.* In *Gray v. Gulf, Mobile and Ohio Railroad Company*, 429, F.2d 1064 (CA5) cert. den. U.S. 1001, another case virtually identical to the case *sub judice*, the United States Court of Appeals, Fifth Circuit, per Chief Judge Goldberg stated:

> "*In deciding the constitutional issue we are not required to navigate in unchartered waters.* Instead, *we are guided firmly to our destination by* two Supreme Court decisions, *Railway Employees' Department, AFL v. Hanson*, 1956, 351 U.S. 225; 76 S. Ct. 714, 100 L. Ed. 1112; and *International Association of Machinists v. Street*, 1961, 367 U.S. 740, 81 S. Ct. 1784; 6 L. Ed. 2d 1141. These decisions were relied upon by Judge Thomas in the court below; they have

been invoked by the parties on this appeal; and we agree that they are dispositive of the issue now before us.", 429 F.2d at 1068 (Emphasis added).

The Courts both granted motions to dismiss a Seventh Day Adventist's action against his employer and a union which claimed that his discharge because of his refusal to pay dues or fees to the union was in violation of his First Amendment free exercise rights.

Despite the clear language of *Hanson* and the clear language of *Gray* and *Linscott* Petitioner alleges error by the Sixth Circuit below because that Court relied on *Hanson*, and *Hanson* involved neither a particularized First Amendment claim nor did *Hanson* specifically invoke First Amendment tests of requiring a showing that the government interest was *paramount*, that any infringement of First Amendment rights was *necessary* or that on *balance* the government interest outweighed the injury. Yet all of these findings were implicit in *Hanson*. The Court in *Hanson* found the *paramount* government interest was industrial peace, any infringement was *necessary* in the sence that there was no more an infringement of First Amendment rights than there would be in the case of a lawyer who was required to be a member of an integrated bar and that on *balance* Congress had authority to adopt all appropriate measures to facilitate the amicable settlement of disputes.

In less than two years then, two cases identical to the case *sub judice* have been decided where two Circuit Courts upheld the *social duty* of payment of dues and initiation fees in the face of constitutional First Amendment free exercise challenges by following the principles announced by this Court in *Hanson*. In each instance, Certiorari has been denied by this Court. Now the United States District Court for the Western District of Michigan, Southern Division per Judge Fox, and the United States Court of Appeals, Sixth Circuit, have added their weight to this interpretation. Nothing has changed since this Court denied Certiorari on two identical cases. This Petition should therefore be denied.

II. The Opinion Of The Court Of Appeals In This Case Does Not Conflict With The Decision Of This Court In *Sherbert v. Verner*, 374 U.S. 398.

Petitioner seeks to escape the consequences of *Hanson, Street, Linscott,* and *Gray* by asserting at page 11 of the Petition that *the question presented in this case is when may conduct dictated by a religious conviction be regulated by the State or Congress. . .*! and by asserting *that this question was authoritatively determined by this Court in Sherbert v. Verner, not Hanson.* This is tantamount to arguing that the issue of whether the payment of union dues and initiation fees is a constitutional *social duty* in the face of a First Amendment challenge was not answered by this Court in *Hanson* but that the question was determined by this Court in *Sherbert v. Verner*, 374 U.S. 398. This latter proposition is patently erroneous.

The only similarity between *Sherbert* and the case *sub judice* is that in *Sherbert* the plaintiff was also a Seventh Day Adventist. The union shop was not involved in *Sherbert*. Nor was the payment of union dues or initiation fees. In *Sherbert* the question was whether or not the denial by South Carolina of unemployment compensation benefits to a Seventh Day Adventist for the reason she refused to work on Saturday, her Sabbath, was an unconstitutional restriction of the free exercise of her religion. This Court, after setting forth various factors to be balanced, determined that such a restriction was in fact unconstitutional.

As Petitioner acknowledges at page 12 of his Petition, *Sherbert* requires a threshold finding before its balancing of interests test applies. The Court must first determine whether there has been an:

> "Infringement by the State of. . . constitutional rights of free exercise [of religion under the First Amendment] . . .", *Sherbert v. Verner*, 374 U.S. at 403.

This is the factor which distinguishes *Sherbert* from the case *sub judice*. The State of South Carolina had an express policy of discrimination based on religion. A statute provided that a person could not be made to work on Sunday if he objected as a matter of conscience. No such allowance was made for Saturday. Mr. Justice Brennan, speaking for this Court in *Sherbert* found that factor to be crucial.

> "*Significantly* South Carolina expressly saves the Sunday worshipper from having to make the kind of choice which we hold here infringes the Sabbatarian's *religious liberty.*" *Sherbert v. Verner*, 374 U.S. 398 at 406 (Emphasis added).

This Court recognized the limitations of the holding in *Sherbert* when it said:

> ". . . the state interest asserted in the present case is wholly dissimilar to the interests which were found to justify the less direct burden upon religious practice in *Braunfeld v. Brown, supra.* The Court recognized that the Sunday closing law which that decision sustained served 'to make the practice of the [Orthodox Jewish Merchants] religious beliefs more expensive, '366 U.S. at 605. But the statute was nevertheless saved by a countervailing factor which finds no equivalent in the instant case — a strong state interest in providing one uniform day of rest for all workers." 374 U.S. at 408.

State or Federal discrimination is lacking in the case *sub judice* and this Court should, therefore, deny the Petition.

Sherbert has been found inapplicable in similar cases. Thus, where a Seventh Day Adventist was fired from his job because his religion forbade working on Saturday although his employer and union required it, the District Court for the Eastern District of Virginia, Richmond Division held that the firing did not constitute an infringement of plaintiff's right to free exercise of religion under *Sher-*

bert. Therefore, the *Sherbert* balancing of interests test did not apply. The Court held:

> "The Court finds *no infringement of plaintiff's rights* concerning his religious beliefs. Religious discrimination should not be equated with failure to accommodate . . . .
>
> "Plaintiff contends that the Court is bound by the rule laid out in *Sherbert v. Verner*. . . .
>
> "It should be noted in the *Sherbert* case it was pointed out that the law of South Carolina expressly saved the Sunday worshipper from having to make the kind of choice which was imposed upon the appellant in that case. Not so in our instant case. There is no evidence of any blanket permission to those who believe Sunday to be the Sabbath to be relieved from work. . . . *The Court does not find Sherbert v. Verner, supra, apropos in the instant case.*", *Dawson v. Mizell*, 325 F. Supp. at 514-515 (Emphasis added).

Although in *Gray* the Fifth Circuit had *Sherbert* before it, it did not invoke it as requiring balancing, nor did the First Circuit in *Linscott* believe it was necessary.

In the case *sub judice* there is no evidence of any discrimination or different treatment of Petitioner from others. The contract makes no reference to religion. No covert intention to aid or hinder religious belief has been alleged. All employees of the Respondent Company were required to join the Respondent Union and pay initiation fees and dues within 30 days after the date of the contract or the date of employment. The contract merely requires the employer to dismiss an employee if he does not pay union fees and dues. This Court should hold that Petitioner's right to free exercise of religion has not been infringed. Therefore, the balancing of interests set forth in *Sherbert* is not applicable. This Court should, therefore, deny the Petition.

III. Assuming Arguendo *Sherbert* Balancing Applies Such Application Requires Denial Of The Petition.

Balancing was not born with *Sherbert*. In balancing compulsory vaccination requirements against a claim they offended religious conscience this Court upheld the *social duty* of vaccination, *Jacobson v. Massachusetts*, 197 U.S. 11. In balancing Sunday closing laws against a claim by Sabbatarians that it infringed their free exercise of religion, this Court upheld the public interest in one day of peace and tranquility, *Braunfeld v. Brown*, 366 U.S. 599. In balancing anti-polygamy laws against a claim that polygamy was commanded by God this Court upheld the public interest against polygamy, *Reynolds v. United States*, 98 U.S. 145. In balancing the public interest in the Federal minimum wage law against a free exercise objection the public interest has been upheld, *Mitchell v. Pilgrim Holiness Church Corp.*, 210 F.2d 879 (CA7) cert. den., 247 U.S. 1013. In balancing the public interest in taxes against a free exercise objection the public interest in taxes has been upheld, *Parker v. Commissioner*, 365 F.2d 792 (CA8) cert. den. 385 U.S. 1026.

In affirming a decision refusing to enjoin an employer from discharging an employee because of his refusal to join a union, where there was a union shop agreement, due to the employee's religious scruples which forbade his becoming a member of organizations composed in any part of "unbelievers" the United States Court of Appeals, Second Circuit, per Judge L. Hand said:

> "The First Amendment protects one against action by the government, though even then, not in all circumstances; but it gives no one the right to insist that in the pursuit of their own interests others must conform their conduct to his own religious necessities. A man might find it incompatible with his conscience to live in a city in which open saloons were licensed; yet he would have no constitutional right to insist that the saloons must be closed. He would have to

leave the city or put up with the *iniquitous dens* no matter what economic loss his change of domicil entailed. We must accommodate our idiosyncrasies, religious as well as secular, to the compromises necessary in communal life; and we can hope for no reward for the sacrifices this may require beyond our satisfaction from within, or our expectations of a better world.", *Otten v. Baltimore & O.R. Co.*, 205 F.2d 58 (CA2) at p. 61, final judgment affirmed sub nom.; *Otten v. Staten Island Rapid Transit Railway Co.*, 229 F.2d 917 (CA2) cert. den. 351 U.S. 983.

The United States Court of Appeals, Ninth Circuit followed *Otten* in disposing of a similar claim, *Wicks v. Southern Pacific Co.*, 231 F.2d 130 (CA9) cert. den. 351 U.S. 946.

The most appropriate balancing this Court has done with respect to the case *sub judice* occurred in *Hanson*. Only after such balancing did this Court hold that a union shop agreement does not violate the First Amendment.

After announcing that *Hanson* controlled, the United States Court of Appeals, Fifth Circuit, in *Gray*, a case identical to the one *sub judice* summarized the balancing of interests which was implicit in the decision as follows:

> "Nor do we consider this a harsh or unjust result. As Judge Thomas observed below, '[p]laintiff's religious scruples are not the first which [have] had to yield to the general applicability of a statute.', 302 F. Supp. at 296. The First Amendment commands us to be vigilant in protecting the free exercise of religion, but religious conscience cannot be a superordinating factor in every situation. *The hand of government is not to be stayed where a compelling governmental interest outweighs the infringement upon First Amendment rights.*", 429 F.2d at 1072 (Emphasis added).

The United States Court of Appeals for the First Circuit recognized the balancing done by this Court in *Hanson*

and applied it in *Linscott*, a case also identical to the one *sub judice* when it said:

> "A strong governmental interest in the union shop was found in *Hanson*. *Sherbert v. Verner* . . . in fact adopted its 'compelling state interest' test from freedom of association cases, see *Sherbert v. Verner*, 374 U.S. at 403 . . ., citing *N.A.A.C.P. v. Button*, 1963, 371 U.S. 415 . . . so that *Hanson's* balancing, and thus its conclusion, should be the same in the case before us, since the government's interest, and the plaintiff's burden (loss of a union-shop employer) are apparently the same.", 440 F.2d at 17.

Nonetheless, to accommodate the Plaintiff's argument that, "*Hanson* faced only with the more general freedom of association issue, is to be read as reserving our present question", the First Circuit in *Linscott* proceeded with the balancing of interests as follows:

> "The state interest in *Sherbert* in compensating or not compensating single individuals, seems less substantial than the federal interest in *Hanson* in preserving the principle and broad purposes of the union shop.
>
> "With respect to *Sherbert*, while the government always has an interest in saving money, its primary concern in connection with unemployment compensation is protection of the disadvantaged person. To deny him physical sustenance because, he will not affront his religious convictions would scarcely be considered social legislation . . . . In the present case the *interests are not merely that of the plaintiff versus the cost to the fisc;* opposed to the plaintiff's interest are both the public and private interests in collective bargaining and industrial peace.", 440 F.2d at 18 (Emphasis added).

Balancing has not been absent in the present case. Judge Fox in his Bench Opinion indicated a balancing process when he said:

> "The tax is to be paid to the agent for the agent's benefit and to no one else. One cannot avoid income tax, state, local or national by agreeing to pay the same to a charitable organization of either the government's choice or of its own choice. Taxes do not work that way. These are not the ways of Caesar. Taxes are supposed to apply to all who share the benefits of the government agency that the taxes support.
>
> "The same principle has been approved as a means of support for certified bargaining agents in the collective bargaining scheme of management labor relations which is developing its own type of common law as well." (Appendix C, p. 25).

Judge Fox was not the first to liken the payment of union dues to the payment of taxes. In a similar case Chief Judge Wyzanski, U.S. District Court, District of Massachusetts said:

> "Moreover, this action is not a violation of the First Amendment because it is the equivalent of the exaction of a non-discriminatory tax levied pursuant to a power conferred by the Constitution and laws and used for a purpose authorized by the Constitution.", *Linscott v. Miller Falls Company*, 316 F. Supp. 1369, at 1371.

On appeal the First Circuit adopted this rationale and the Fifth Circuit in *Gray* also analogized the payment of union dues to the payment of taxes.

Both Judge Fox and the Sixth Circuit Court in affirming the motion to dismiss relied on *Hanson, Gray* and *Linscott*, all cases where a balancing of interest occurred. The proof to be balanced was Petitioner's Complaint which was treated as true. This Court may take judicial notice of the public interest in the union shop.[1]

Assuming arguendo that the Union Shop Agreement between Respondent Union and Respondent Company in-

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[1] 9 Wigmore, *Evidence*, §2571 (3rd ed. 1940)

fringes on Petitioner's right to free exercise of religion, the following test may be applied:

> ". . . any incidental burden on the free exercise of appellant's religion may be justified by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate . . .' ", *Sherbert v. Verner*, 374 U.S. 398, 403 citing *N.A.A.C.P. v. Button*, 371 U.S. 415.

According to the *Sherbert* test the Petition should be denied. The compelling public interest in a union shop, expressed in *Hanson*, *Gray*, and *Linscott* outweighs any incidental and indirect infringement of Petitioner's right to free exercise of religion.

The compelling public interest in the union shop has too often been stated by this Court and the Congress to be questioned now. As a very minimum it was thought that this arrangement would promote industrial peace and security. The Legislative History of Section 8(a) (3) of the National Labor Relation Act indicates that the union shop agreement was a compromise between backers of the more inclusive closed shop and those who wanted no compulsory unionism at all. It was the sole method by which the government could attain its goal.[2]

The government interest in the union shop is far more substantial than: the government's interest in serving District of Columbia Jail inmates pork when weighed against a free exercise objection, *Barnett v. Rodgers*, 410 F.2d 995 at 1000 (D.C. Cir.); the government interest in preventing an embarrassing antiwar display at the District of Columbia Ellipse when weighed against a First Amendment objection, *Women Strike For Peace v. Hickel*, 420 F.2d 599 at 605 (D.C. Cir.); the government interest in obtaining competent jurors when weighed against a free exercise objection, *In re Jenison*, 375 U.S. 14, the government inter-

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[2]H.R. Rep. No. 245, 80th Cong., 1st Sess.; S. Rep. No. 105, 80th Cong., 1st Sess.; "Legislative History of the Labor-Management Act, 1947."

est in proscribing the use of pejote, a halluciogenic when weighed against a religious belief by an Indian tribe that it was a sacramental symbol similar to bread and wine used in Christian churches, *People v. Woody*, 61 Cal. 2d 716, 719, 40 Cal. Rptr. 69 (1964); or the government interest in two additional years of compulsory education when weighed against a free exercise objection, *Wisconsin v. Yoder*, ... U.S. .....; all cases upon which Petitioner relies. Rather, the compelling and substantial government interest in the union shop is similar to the government interest in military conscription when weighed against religious objections to a particular war, *Gillette v. U.S.*, 401 U.S. 437 at 461, 462.

The union shop in the present case was created only through an agreement between Respondent Company and Respondent Union pursuant to the authority of the National Labor Relations Act. In agreeing to a union shop it must be assumed that Respondent Company expected something in consideration. That consideration included industrial peace and security. Respondent Company has a great interest and investment in such peace and security. Now Petitioner has claimed that the Company unlawfully discharged him. Yet if the Company declined to discharge the Petitioner the Respondent Union could institute a federally supported suit, if not an unfair labor practice charge, for failure to live up to its bargaining agreement, *Linscott v. Miller Falls Co.*, 440 F.2d 14 (CA1), cert. den. 404 U.S. 872. That hardly promotes industrial peace, security, or stability. As this Court noted over a decade ago:

> "We are a cosmopolitan nation made up of people of almost every conceivable religious preference. These denominations number almost three hundred. Consequently, it cannot be expected, much less required, that legislators enact no law regulating conduct that may in some way result in an economic disadvantage to some religious sects and not to others because of the special practices of the various religions.", *Braunfeld v. Brown*, 366 U.S. at p. 606.

The uncertainty and disruption which would result if an employer were required at his peril to run the risk of violating either the Constitution or his collective bargaining agreement, every time a member of one of these three hundred denominations asserted the payment of union dues and initiation fees violated his free exercise rights demands that this Petition be denied.

It has been held that an employer who is a Seventh Day Adventist may not refuse to bargain collectively with a union notwithstanding the employer's religious belief that forbade him from dealing with a labor union because the collective bargaining requirements under the National Labor Relations Act are sufficiently invested with public interest to justify the good faith bargaining requirement to employers, notwithstanding their religious beliefs, *Cap-Santa Vue v. N.L.R.B.*, 424 F.2d 833 (D.C. Cir.). The same result should follow for an employee.

The Petition should therefore be denied.

CONCLUSION

The *Hanson* case clearly held that under a union shop agreement the requirement that *all* members must pay dues and initiation fees is not an unconstitutional infringement of First Amendment rights. This holding was reaffirmed by the Fifth Circuit in *Gray* and the First Circuit in *Linscott*. Despite this precedent Petitioner now seeks a Writ of Certiorari to the Sixth Circuit for following the instructions of this Court. The Petition should be denied.

Respectfully Submitted

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J. Michael Kemp
Attorneys for Petitioner

DATED: October 4, 1972